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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,321	06/20/2003	A.B. Hudson	34057	6166

7590 07/20/2005

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EXAMINER
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PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/600,321

Applicant(s)

HUDSON, A.B.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-23, 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heck (3,704,204) and Coyner (2,182,171).

Heck discloses a composition containing meat (palatability enhancer) and bone meal (col. 3, lines 60-65). Coyner discloses that it is known to feed calves a supplement made of bone meal and calcium (page 1, lines 40-50). Claims 1 and 3 differ from the reference in the particular amounts of ingredients and in that the palatability enhancer is derived from animals. However, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of ingredients in the composition. Therefore, it would have been obvious to use known ingredients as shown by the above references to make the claimed compound.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the immediately preceding references as applied to claims 4-6 above, and further in view of Saebo (US 2004/0157932A).

Claim 4 further requires that the composition have an ingestible shell and claim 5 that it is biodegradable and claim 6 that it is a gelatin material. Saebo discloses that it is

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known to use gel caps made from gelatin in animal nutrition (abstract and page 1, para. 0007). A hard gelatin capsule is disclosed in para. 9940. The capsule is seen to have been biodegradable, as the nutrients could not have been used by the animal, if it were not biodegradable. Therefore, it would have been obvious to make a shell of gelatin as disclosed by Saebo to encapsulate the composition of the above references as Saebo discloses a gelatin material as an encapsulant for animal supplements.

Claims 7-23, 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heck (3,704, 204) and Coyner 92,182,171) as applied to claims 1-3 above and further in view of Miller et al. 93,908,025) and Lasater et al. (5,200,218) and Nadeau (6,280,779).

Claim 7 further requires particular amounts of ingredients. Miller et al. disclose a composition containing bone meal and meat meal (col. 2, lines 66-70 and col. 3, lines 30-45). The meat (palatability enhancer) is used in amounts of 19-25T and meat by-products are used in amounts of 0-15%. Lasater et al. disclose bone meal used in various amounts (col. 4, lines 30-65). Nadeau et al. disclose protein (meat) in amounts of 42% and ash (bone meal) in the amounts of 7.82. The protein is 50% of the product and the ash is about 8 %. In diet B, the ash is 10%. The reference discloses the use of steamed bone meal, which is assumed to give the ash content (col. 5, lines 1-70 and col. 6, lines 1-15). Therefore, it would have been obvious to use known ingredients, which are known to be palatable to animals such as meat as a palatability enhancer in the claimed amounts as shown by Nadeau. The other references disclose that it is known to use meat and bone in animal foods.

Claims 8-12 further require various ratios of bone meal to palatability enhancer. However, as the reference to Nadeau et al. disclose the claimed amounts, it would have been obvious to vary the amounts for their known function of adding nutrition and flavor to a product.

The limitations of claims 13-18 have been disclosed above and are obvious for those reasons. Claim 13 further requires that the supplement is palatable to dogs and cats. However, the composition has been shown above, and dogs and cats are known to love meat. Therefore, it would have been obvious to make a supplement as claimed.

Claims 19-23, 25-28 are to a method of giving an animal the claimed supplement. Nadeau et al. disclose a pet food, which contains protein (palatability enhancer) and ash (bone meal) in the claimed amounts. Diet C discloses steamed bone meal, which is assumed to be the source of ash (col.s 5, and 6, diets B, C and D). The further limitations as to amounts have been disclosed above and are obvious for those reasons.

#### ARGUMENTS

Applicants argue that the references to Heck and Coyner do not teach the claimed invention and that it would not have been within the skill of the ordinary worker to determine the particular amounts of ingredients. This is not seen as applicants are using a well known food for animals, i. e. bone meal and adding enough flavoring to make it palatable. Claims 1-3 are not limited to any particular palatability enhancer. Nothing has been shown that any of these ingredients would not enhance the palatability

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of the bone dust or the other ingredients of the other references.

Applicants argue that the Examiner is relying on general knowledge that the amounts claimed would have been obvious. This is not what was said. One can rely on ordinary skill in the art. Certainly, one can tell when making a compound how much of a flavoring ingredient is necessary before it becomes wasteful to add more. Certainly, applicants are optimizing the amounts to make an edible product.

Applicants argue as to Miller and Lasater et al. that they do not show the claimed amounts for bone and enhancer. However, they were not cited for such, Nadeau et al. was. Certainly, applicants have the ability to determine more than the Office what the percentage of bone meal would have been in the reference.

Applicants argue that the limitations as to "consisting essentially of". However, nothing is seen in the specification, which says what ingredients can be excluded or are considered to be non-essential ingredients.

Therefore, it is seen that it would have been within the skill of the ordinary worker to determine the amount of palatability enhancer to make the claimed product because of the economics of the product and the taste preferences of animals.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 7-19-05

  
**HELEN PRATT**  
**PRIMARY EXAMINER**